

Message Text

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ORIGIN EUR-12

INFO OCT-01 EA-10 IO-13 ISO-00 EB-08 SIG-03 JUSE-00
AGR-01 CEA-01 CIAE-00 COME-00 DODE-00 FRB-03 H-01
INR-10 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01
CTME-00 AID-05 SS-15 STR-07 ITC-01 TRSE-00 ICA-11
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TO AMEMBASSY BRUSSELS
INFO AMEMBASSY BONN
AMEMBASSY COPENHAGEN
AMEMBASSY DUBLIN
AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY THE HAGUE
AMEMBASSY TOKYO
USMISSION GENEVA

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USEEC ALSO EMBASSY FOR INFO; USOECD ALSO FOR EMBASSY, MTN

E.O. 11652:N/A

TAGS: EEC, ETRD

SUBJECT: ZENITH COUNTERVAILING DUTY CASE
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1. ON APRIL 12, EC DELEGATION (LENG) PRESENTED NOTE TO
ACTING ASSISTANT SECRETARY HORMATS OUTLINING THE COMMUNITY'S
POSITION ON THE ZENITH APPEAL WHICH WILL BE HEARD BY THE
SUPREME COURT APRIL 25. LENG REQUESTED THAT THE NOTE BE
TRANSMITTED EXPEDITIOUSLY TO THE COURT AND INFORMED US THAT
DELEGATION PROBABLY WOULD ISSUE A PRESS RELEASE STATING

THAT THE NOTE HAD BEEN DELIVERED AND SUMMARIZING THE COMMUNITY'S CONCERNS. TEXT OF NOTE FOLLOWS.

2. QUOTE

THE DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF STATE AND HAS THE HONOUR TO REFER TO THE CASE BROUGHT BY THE ZENITH CORPORATION AGAINST THE UNITED STATES TREASURY DEPARTMENT CHALLENGING THAT DEPARTMENT'S DECISION IN 1976 NOT TO COUNTERVAIL AGAINST CERTAIN ELECTRONIC PRODUCTS FROM JAPAN, WHICH CASE IS TO BE REVIEWED BY THE UNITED STATES SUPREME COURT.

FOR THE REASONS SUMMARIZED BELOW, THE DELEGATION HAS BEEN INSTRUCTED TO STRESS TO THE DEPARTMENT OF STATE THAT THE COMMUNITY CONTINUES TO LOOK TO THE UNITED STATES ADMINISTRATION TO SUSTAIN BEFORE THE SUPREME COURT, AS IN EARLIER PROCEEDINGS THAT, AS A MATTER OF LAW, THE NON-EXCESSIVE REFUND OF INDIRECT TAXES ON EXPORTS TO THE UNITED STATES DOES NOT CONSTITUTE A "BOUNTY OR GRANT" SUBJECT TO COUNTERVAILING DUTIES.

THE PARTICULAR FACTORS TO WHICH THE DELEGATION IS INSTRUCTED TO DRAW ATTENTION ARE AS FOLLOWS.

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THE CONSISTENT PRACTICE OF THE UNITED STATES SINCE 1898, REFLECTING THE TREATMENT OF HER OWN EXPORTS AS WELL AS HER IMPORTS FROM OTHER COUNTRIES, HAS CONTRIBUTED TO ESTABLISHING A CORPUS OF INTERNATIONAL LAW AND COMITY REGARDING REMISSION OF INDIRECT TAXES IN INTERNATIONAL TRADE. THIS PRINCIPLE WAS REFLECTED IN THE UNITED STATES' PROPOSALS RELATING TO THE CREATION OF A UNITED NATIONS INTERNATIONAL TRADE ORGANIZATION, AND WAS SUBSEQUENTLY EMBODIED IN THE PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE.

THUS, ARTICLE VI PARAGRAPH 4 OF THE GATT PROVIDES THAT REFUNDS OF INDIRECT TAXES ON EXPORTS ARE NOT TO BE TREATED AS A SUBSIDY AND ARE THEREFORE NOT COUNTERVAILABLE. THIS PRINCIPLE IS ACCEPTED AND ADHERED TO BY ALL MAJOR NATIONS, AND HAS CONTRIBUTED TO INTERNATIONAL CONFIDENCE IN THE WORLD TRADING SYSTEM. INDEED THIS SAME PRINCIPLE IS EMBODIED IN THE COMMUNITY'S BASIC LAW (ARTICLES 96 AND 112, PARA. 2 OF THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY) WITH RESPECT TO THE PROVISIONS FOR ENSURING THAT COMPETITION WITHIN THE COMMUNITY IS NOT DISTORTED BY DIFFERENCES IN TAXES BETWEEN THE MEMBER STATES.

ANY DECISION IN THE ZENITH CASE WHICH FAILED TO MAKE IT CLEAR THAT THE REMISSION OF INDIRECT TAXES ON EXPORTS IS, AS A MATTER OF UNITED STATES LAW, NOT COUNTERVAILABLE, WOULD THEREFORE CREATE A SITUATION WHERE A LARGE PROPORTION OF US IMPORTS, NOT ONLY FROM JAPAN, BUT FROM ANY OTHER SOURCE, MIGHT BE EXPOSED TO LITIGATION SEEKING EXTRA DUTIES BASED ON INDIRECT TAX REFUNDED OR NOT COLLECTED IN THE COUNTRY OF ORIGIN. IN SUCH A CASE THE PRODUCT CONCERNED WOULD BE SUBJECT TO DOUBLE TAXATION SINCE IT WOULD HAVE TO BEAR NOT ONLY THE EXTRA IMPORT DUTIES BASED ON THE FOREIGN TAX REMITTED BUT ALSO THE EXCISE TAX AND/OR SALES TAX IMPOSED IN THE UNITED STATES. THE IMPOSITION OF SUCH DUTIES WOULD HAVE INCALCULABLE ECONOMIC AND POLITICAL CONSEQUENCES AND IT WOULD FUNDAMENTALLY DISTORT THE BALANCE OF LIMITED OFFICIAL USE

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RIGHTS AND OBLIGATIONS AMONG GATT CONTRACTING PARTIES. THIS WOULD BE ALL THE MORE SERIOUS BECAUSE AMERICAN LEGISLATION MAY REQUIRE THE IMPOSITION OF COUNTERVAILING DUTIES WITHOUT PROOF OF INJURY (GATT ARTICLE VI).

ANY MAJOR CHANGE IN INTERNATIONAL TRADE CONDITIONS HEAVILY AFFECTS THE COMMUNITY BECAUSE OF ITS CLOSE INTEGRATION IN THE WORLD ECONOMY. THE COMMUNITY COULD NOT THEREFORE IGNORE THE ECONOMIC IMPACT OF WHOLESAL IMPOSITION OF COUNTERVAILING DUTIES ON THEIR EXPORTS TO THE UNITED STATES. SUCH A DEVELOPMENT WOULD JEOPARDIZE THE WHOLE MULTILATERAL EFFORT - NOTABLY IN THE MTN - TO CREATE A MORE OPEN, LIBERAL AND FAIR WORLD TRADING ORDER. IT WOULD STRENGTHEN PROTECTIONIST FORCES AND REPRESENT A MAJOR SETBACK FOR THE RESUMPTION OF ECONOMIC EXPANSION AND PROSPERITY THROUGHOUT THE WORLD.

THE DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES AVAILS ITSELF OF THE OPPORTUNITY TO RENEW TO THE DEPARTMENT OF STATE THE ASSURANCES OF ITS HIGHEST CONSIDERATION.

END QUOTE. CHRISTOPHER

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